HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

Chapter VIII, Rule 32(2) (b))

Description of the case

W.P. No. 988 of 2004
Ms/ Devi Dutt Budhiballab
and sons

VS

Narayan Singh and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision- 13.10.2004

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 988 OF 2004

M/s Devi Dutt Budhiballab and Sons .....Petitioner.

Versus

Narayan Singh and others. .....Respondents.

Hon'ble Rajesh Tandon, J.

By the present Writ Petition the petitioner has prayed for quashing of the order dated 25th September, 2004 by which the amendment application of the petitioner has been rejected.

Briefly stated, the suit was filed by the plaintiff for recovery of a sum of Rs. 23,966/-. In paragraph 4 of the plaint, it has been mentioned as under:-

"कि प्रतिवादी ने वादी से यह भी इकरार किया था कि आखिरी खाता क्लोज होने के दिन से देय धनराशी पर 22% सालाना की दर से ब्याज वादी को अदा करेगा। हल्द्वानी मे यही ब्याज अदायगी का रिवाज व चलन है।"

On the basis of the averments made in paragraph 4, the petitioner has sought the amendment adding 22% as interest. The relevant amendment to that effect is quoted below:-

"महोदय,

उपरोक्त मामले के दौराने वाद वादी के अधिवक्ता को पत्रावली का अवलोकन से यह तथ्य सज्ञान मे आया है कि टंकण की त्रुटिवश वाद पत्र के अनुतोष अ की प्रथम पंक्ति में 23,966/– रू0 के पश्चात मय ब्याज 22 प्रतिशत लिखाने से रह गया है जिस तथ्य को वाद पत्र में लाया जाना आवश्यकीय है। वादी द्वारा किये गये उक्त संशोधन से वाद की प्रकृति में कोई विपरीत प्रभाव नहीं पड़ेगा।

अतः न्यायालय श्रीमान से अनुरोध है कि वादी को वाद पत्र में निम्न प्रकार से संशोधन करने की अनुमति प्रदान करने की कृपा की जाय।

यह कि वाद पत्र के अनतोष अ की प्रथम पंक्ति में 23,966/– के पश्चात मय ब्याज 22 प्रतिशत वार्षिक की दर से धनराशि वसूली होने तक लिखा दिया जाय।"

The learned Judge has rejected the same on the ground that the suit is old one and the plaintiff wants to linger the proceedings.

A perusal of the record shows that the plaintiff himself has filed the suit for recovery of the amount and therefore, there is no occasion to delay the proceedings. However, the petitioner has submitted that he will file an application explaining the delay as well in the light of the judgment of the Apex Court in the case of *B.K.N. Pillai and P. Pillai reported in S.C. 2000*. The same is quoted below:-

"2. The purpose and object of Order 6 Rule 17 CPC is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just. The power to allow the amendment is wide and can be exercised at any stage of the proceedings in the interests of justice on the basis of guidelines laid down by various High Courts and this Court. It is true that the amendment can not be claimed as a matter of right and under all circumstances. But it is equally true that the courts while deciding such prayers should not adopt hyper technical approach. Liberal approach should be the general rule particularly in cases where the other side can be compensated with the costs. Technicalities of law should not be permitted to hamper the courts in the administration of justice between the parties. Amendments are allowed in the pleadings to avoid uncalled for multiplicity of litigation.

3. This court in A.K. Gupta and Sons V. Damodar Valley Corporation held:

"The general rule, no doubt, is that a party is not allowed by amendment to set up a new case or a new cause of action particularly when a suit or new, case or cause of action is barred: Weldon V. Neale. But it is also well recognized that where the amendment does not constitute the addition of a new cause of action or raise a different case, but amounts to no more than a different or additional approach to the same facts, the amendment will be allowed even after the expiry of the statutory period of limitation : See Charan Das V. Amir Khan and L.J. Leach and Company Limited and another v. Jardine Skinner and Company.

The principal reasons that have led to the rule last mentioned are, first, that the object of courts and rules of procedure is to decide the right of the parties and not to punish them for their mistakes (Cropper v. Smith) and secondly, that where the amendment can be said in substance to be already in the pleading sought to be amended in Krishandas v. Rachappa Vithoba approved in Pirgonada Hongonda Patil.

The expression 'cause of action' in the present context does not mean 'every fact which it is material to be proved to entitle the plaintiff to succeed' as was said in Cooke v. Gill, in a different context, for if it were so, material fact could never be amended or added and, of course, no one would want to change or add an immaterial allegation by amendment. That expression for the present purpose only means, a new claim made on a new basis constituted by new facts. Such a view was taken in Robinson v. Unicos Property Corporation Limited and it seems to us to be the only possible view to take. Any other view would make the rule futile. The words 'new case' have been understood to mean 'new set of ideas' : Doman v. J.W. Ellis and Company Limited. This also seems to us to be

a reasonable view to take. No amendment will be allowed to introduce a new set of ideas to the prejudice of any right acquired by any part by lapse of time."

Again in Smt. Ganga Bai v. Vijai Kumar and Ors. this Court held:

"The power to allow an amendment is undoubtedly wide any may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far reaching discretionary powers is governed by judicial considerations and wider the discretion, greater ought to be the care and circumstances on the part of the Court."

In M/s. Ganesh Trading Company v. Moji Ram, it was held:

"It is clear from the foregoing summary of the main rules of pleadings and provisions for the amendment of pleadings, subject to such terms as to costs and giving to all parties concerned necessary opportunities to meet exact situation resulting from amendments, are intended for promoting the ends of justice and not for defeating them. Even if a party or its Counsel is inefficient in setting out its case initially the short-coming can certainly be removed generally by appropriate steps taken by a party which must no doubt pay costs for the inconvenience or expense caused to the other side from its omissions. The error is not incapable of being rectified so long as remedial steps do not unjustifiably injure rights accrued."

Liberty is given to the petitioner to apply fresh seeking the amendment and the same shall be disposed of after hearing both the parties in the light of the law laid down by the Apex Court as stated above.

The plaintiff has filed a Suit in the year, 1995 and the said suit is still pending. The pendency of the present Writ Petition will unnecessarily delay the proceedings of the suit.

In view of the aforesaid fact, the justice oriented approach will be that the petitioner may file a separate application for deciding the amendment matter in the light of the observations made above.

Subject to the aforesaid observation, Writ Petition is disposed of.

13.10.2004 (RAJESH TANDON, J.)
P.S.R.